

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 467

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO GAME AND FISH; PROVIDING FOR AUTHORITY FOR THE
CONTROL AND PREVENTION OF THE SPREAD OF AQUATIC INVASIVE
SPECIES IN NEW MEXICO; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 17, Article 4 NMSA
1978 is enacted to read:

"~~[NEW MATERIAL]~~ AQUATIC INVASIVE SPECIES CONTROL.--

A. Based on a determination of credible scientific
evidence, the director, after consulting with the secretary of
energy, minerals and natural resources and with the concurrence
of the director of the New Mexico department of agriculture, is
authorized to designate:

(1) species of exotic or nonnative animals or
plants as aquatic invasive species;

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underscored material = new
[bracketed material] = delete

1 (2) water bodies within the state as infested
2 waters; and

3 (3) specific requirements to decontaminate
4 conveyances and equipment.

5 B. Prior to entering any water body in the state,
6 the owner or person in control of a warning-tagged conveyance
7 or warning-tagged equipment or a conveyance or equipment that
8 has been in an infested water body in New Mexico or elsewhere
9 shall:

10 (1) have the conveyance or equipment
11 decontaminated by a person or entity approved by the director
12 to effect decontamination, and only the person legally
13 effecting the decontamination is authorized to remove a warning
14 tag; and

15 (2) provide certification by a person legally
16 authorized to effect decontamination that the conveyance or
17 equipment is free from infestation or otherwise demonstrate
18 compliance with the decontamination requirements established by
19 the director.

20 C. A law enforcement officer may impound a
21 conveyance or equipment if the person transporting the
22 conveyance or equipment refuses to submit to an inspection
23 authorized by this section and the officer has reason to
24 believe that an aquatic invasive species may be present, or if
25 the conveyance or equipment has a warning tag affixed and the

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1 operator of the conveyance is attempting to enter a state water
2 body and cannot provide evidence that the conveyance or
3 equipment has been decontaminated. A law enforcement officer
4 shall take action to prevent equipment or conveyances believed
5 or known to contain an aquatic invasive species and warning-
6 tagged equipment or conveyances from entering a state water
7 body.

8 D. The impoundment of a conveyance or equipment may
9 continue for a reasonable period necessary to inspect and
10 decontaminate the conveyance or equipment.

11 E. Notwithstanding any provision to the contrary,
12 no motor vehicle that is drawing a conveyance shall be
13 impounded pursuant to this section.

14 F. Trained personnel of the department of game and
15 fish or the state parks division of the energy, minerals and
16 natural resources department may:

17 (1) establish, operate and maintain aquatic
18 invasive species check stations at or adjacent to the entrance
19 to any state-controlled water body or, pursuant to a
20 cooperative agreement, at or adjacent to any county, municipal
21 or federally or privately controlled water body or at or
22 adjacent to the exit point of an infested water body in order
23 to inspect conveyances and equipment prior to a conveyance or
24 equipment entering, being launched onto or being directly
25 exposed to water bodies of the state or upon the conveyance's

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1 or equipment's departure from infested waters;

2 (2) affix a warning tag to equipment or a
3 conveyance where the presence of an aquatic invasive species
4 has been found; or

5 (3) affix a warning tag to a conveyance or
6 equipment upon the conveyance or equipment leaving an infested
7 water.

8 G. It is unlawful for a person to:

9 (1) knowingly possess, import, export, ship or
10 transport an aquatic invasive species into, within or from the
11 state;

12 (2) knowingly release, place, plant or cause
13 to be released, placed or planted an aquatic invasive species
14 into a water body;

15 (3) remove a warning tag other than as
16 provided pursuant to this section;

17 (4) introduce any tagged conveyance or
18 equipment or any equipment or conveyance from which a warning
19 tag has been unlawfully removed into a water body without first
20 having that conveyance or equipment decontaminated; or

21 (5) knowingly introduce into any water body a
22 conveyance or equipment that has been exposed to an infested
23 water body or a water body in any other state known to contain
24 aquatic invasive species without first being decontaminated.

25 H. Knowingly or willfully violating any provision

1 of this section as a first offense is a petty misdemeanor. A
2 second or subsequent violation of any provision of this section
3 is a misdemeanor. Any violation is punishable pursuant to
4 Section 31-19-1 NMSA 1978.

5 I. The director or the director's designee shall
6 coordinate the monitoring of the water bodies of the state for
7 the presence of aquatic invasive species, including privately
8 controlled waters if the director has authorized access to them
9 or has received permission to monitor them from the persons
10 controlling access to such waters.

11 J. The commission is authorized to adopt rules
12 pursuant to Section 17-1-26 NMSA 1978, and the secretary of
13 energy, minerals and natural resources is authorized to adopt
14 rules pursuant to Section 16-2-32 NMSA 1978 as necessary to
15 implement and enforce the provisions of this section.

16 K. The director may enter into cooperative
17 agreements with any federal, state, county or municipal
18 authority or private entity that may be in control of a water
19 body potentially affected by aquatic invasive species.

20 L. As used in this section:

21 (1) "aquatic invasive species" means quagga
22 mussels and zebra mussels and other exotic or nonnative aquatic
23 animals, including invertebrates but excluding those species
24 listed as protected in Chapter 17 NMSA 1978, or any plant or
25 animal species whose introduction into an aquatic ecosystem is

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1 determined by the director, after consulting with the secretary
2 of energy, minerals and natural resources and with the
3 concurrence of the director of the New Mexico department of
4 agriculture, to cause or be likely to cause harm to the
5 economy, environment or human health or safety;

6 (2) "commission" means the state game
7 commission;

8 (3) "conveyance" means a motor vehicle,
9 vessel, trailer or any associated equipment or containers,
10 including, but not limited to, live wells, fish-hauling tanks,
11 ballast tanks, motorized skis and bilge areas that may contain
12 or carry an aquatic invasive species or any other equipment by
13 which aquatic invasive species may be introduced into an
14 aquatic ecosystem;

15 (4) "decontaminate" means to wash, drain, dry
16 or otherwise treat a conveyance in accordance with guidelines
17 established by the director in order to remove or destroy an
18 aquatic invasive species;

19 (5) "director" means the director of the
20 department of game and fish;

21 (6) "equipment" means an article, a tool, an
22 implement, a device or a piece of clothing, including boots and
23 waders, that is capable of containing or transporting water;

24 (7) "infested water" means a geographic
25 region, water body or water supply system or facility within

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1 the state that the director, after consulting with the
2 secretary of energy, minerals and natural resources and with
3 the concurrence of the director of the New Mexico department of
4 agriculture, identifies as carrying or containing an aquatic
5 invasive species;

6 (8) "inspect" means to examine a conveyance or
7 equipment to determine whether an aquatic invasive species is
8 present;

9 (9) "law enforcement officer" means a state or
10 federal certified law enforcement officer;

11 (10) "trained personnel" means individuals who
12 have successfully completed the United States fish and wildlife
13 service's aquatic invasive species watercraft inspection and
14 decontamination training, level I or level II;

15 (11) "warning tag" means a tag that is affixed
16 to equipment or a conveyance upon the equipment or conveyance
17 leaving an infested water or upon an inspection determining
18 that the equipment or conveyance contains an aquatic invasive
19 species that requires the equipment or conveyance to be
20 decontaminated; and

21 (12) "water body" means a natural or impounded
22 surface water, including a stream, river, spring, lake,
23 reservoir, pond, wetland, tank or fountain."

24 Section 2. EMERGENCY.--It is necessary for the public
25 peace, health and safety that this act take effect immediately.

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